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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,478	12/21/2001	James B. Melesky	82/1376US	4450
22822 7590 04/10/2007 LEWIS, RICE & FINGERSH, LC ATTN: BOX IP DEPT. 500 NORTH BROADWAY SUITE 2000 ST LOUIS, MO 63102			EXAMINER A. PHI DIEU TRAN	
			ART UNIT	PAPER NUMBER
			3637	
			MAIL DATE	DELIVERY MODE
			04/10/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Application Number</b> 	<b>Application/Control No.</b> 10/024,478 Phi A	<b>Applicant(s)/Patent under Reexamination</b> MELESKY, JAMES B. <b>Art Unit</b> 3637	
<b>Document Code - AP.PRE.DEC</b>			

## Notice of Panel Decision from Pre-Appeal Brief Review



This is in response to the Pre-Appeal Brief Request for Review filed 3/14/07.

1. ☐ **Improper Request** – The Request is improper and a conference will not be held for the following reason(s):

- ☐ The Notice of Appeal has not been filed concurrent with the Pre-Appeal Brief Request.
- ☐ The request does not include reasons why a review is appropriate.
- ☐ A proposed amendment is included with the Pre-Appeal Brief request.
- ☐ Other:

The time period for filing a response continues to run from the receipt date of the Notice of Appeal or from the mail date of the last Office communication, if no Notice of Appeal has been received.

2. ☒ **Proceed to Board of Patent Appeals and Interferences** – A Pre-Appeal Brief conference has been held. The application remains under appeal because there is at least one actual issue for appeal. Applicant is required to submit an appeal brief in accordance with 37 CFR 41.37. The time period for filing an appeal brief will be reset to be one month from mailing this decision, or the balance of the two-month time period running from the receipt of the notice of appeal, whichever is greater. Further, the time period for filing of the appeal brief is extendible under 37 CFR 1.136 based upon the mail date of this decision or the receipt date of the notice of appeal, as applicable.

- ☐ The panel has determined the status of the claim(s) is as follows:  
 Claim(s) allowed: 17, 21.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 14, 22, 24, 25, 27-29, 31, 32.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.


3. ☐ **Allowable application** – A conference has been held. The rejection is withdrawn and a Notice of Allowance will be mailed. Prosecution on the merits remains closed. No further action is required by applicant at this time.

4. ☐ **Reopen Prosecution** – A conference has been held. The rejection is withdrawn and a new Office action will be mailed. No further action is required by applicant at this time.

All participants:

(1) Lanna Mai LM

(2) Meredith Petravick mp

(3) Phi A. 

(4) \_\_\_\_\_

4/4/07

Art Unit: 3637

This is to clarify examiner's response to the Secondary Considerations. Examiner considered the Secondary Considerations as submitted by applicant and found them to be non-persuasive. Examiner should have stated "non-persuasive" instead of "moot". Waters et al as modified by Helbig and other references for the dependent claims, shows the limitations as claimed. Applicant's Declaration states that persons knowledgeable in the art believe the invention to be an innovative step beyond the prior art solving a long felt need in industry and which show commercial success of the product from use by those in the industry, examiner respectfully states that the followings: first of all, exhibits are stating opinions only and the opinions are not persuasive; secondly, the scope of the exhibits do not commensurate with the scope of the claims as it is unclear what structures Tom Donofrio, and George Temme, are referring to and applicant has multiple embodiments for the invention; thirdly, there is no evidence of commercial success; fourthly, applicant has not provided evidence that establish results are unexpected and significant.